

REMARKS**1. The Amendments and the Support Therefor**

No claims have been canceled, eight new claims (53-60) have been added, and claims 24, 34, 36, 40, 43, and 46 have been amended to leave claims 24-34, 36-43, and 46-60 in the application.

Regarding the amendments:

Claims 24, 34, 36, 40, 43, and 46: are amended to further specify the invention, as discussed in the further Remarks below.

Claim 53: is a new dependent claim (from allowed claim 39) which finds basis in claim 24.

Claim 54: is a new dependent claim (from allowed claim 39) which finds basis in claim 24.

Claim 55: is a new dependent claim (from allowed claim 39) which finds basis in claim 25.

Claim 56: is a new dependent claim (from allowed claim 39) which finds basis in claim 26.

Claim 57: is a new dependent claim (from allowed claim 39) which finds basis in claim 31.

Claim 58: is a new dependent claim (from allowed claim 39) which finds basis in claim 32.

Claim 59: is a new dependent claim (from allowed claim 39) which finds basis in claim 33.

Claim 60: is a new dependent claim (from allowed claim 39) which finds basis in claim 34.

2. Rejection of Claims 24-29, 31-34 and 50 under 35 USC §103 in view of U.S. Pub. 2002/0138095 to Mazzocchi et al.

These rejections are obviated by the amendment of claim 24 to recite that the stent is defined by a single unitary length of wire, thereby making it clear that the recited stent is indeed formed of a single, non-cut wire (i.e., the limitation is a structural one, rather than a statement of the process by which the stent was formed).

The rejection is therefore overcome. The Examiner acknowledges that *Mazzocchi et al.* is not formed of a single length of wire, but states that it would have been obvious to form *Mazzocchi et al.* of a single length of wire *cut into strands* to thereby have *Mazzocchi et al.* meet claim 24. However, current claim 24 plainly recites a stent formed of a "non-cut" wire, and beyond that, there is no true motivation which is objectively ascertainable from the art of record for an artisan to construct *Mazzocchi et al.* of a single length of wire. It is apparent that

Mazzocchi et al. is not so formed, since the various embodiments of *Mazzocchi et al.* are shown with multiple freestanding wire ends (see, e.g., FIGS. 6C, 7, 9A, etc.); also note the discussion at paragraphs 0034-0035 onward of *Mazzocchi et al.* noting that its stent is made of metal fabric having "a plurality of wire strands" having a particular orientation to allow the strands to cooperate in an expandable/contractable braided fashion.

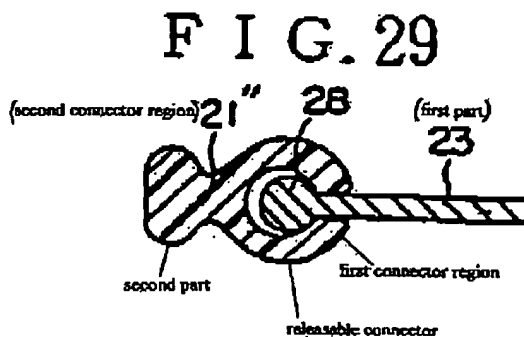
More fundamentally, owing to the configuration of *Mazzocchi et al.*, it is not at all apparent how *Mazzocchi et al.* could even be formed of a single length of wire. This is particularly true in view of the fact that *Mazzocchi et al.* must form a flexible meshlike shape which is capable of expansion/contraction, and it is not seen how the braided mesh of *Mazzocchi et al.* could be flexibly maintained with a single wire length without having portions of the length bind other portions, and prevent them from expanding/contracting (note pars. 0034-0035 onward of *Mazzocchi et al.*). Separate woven lengths or braids, on the other hand, would be freely expandable or contractable, and this is the structure used by *Mazzocchi et al.*. Since a proposed modification cannot be obvious unless it has a reasonable expectation of a successful result (MPEP 2143.02),¹ and since it is not seen how *Mazzocchi et al.* could be successfully formed of a single length of wire without destroying its intended function (see MPEP 2143.01, subsection entitled "The Proposed Modification Cannot Render The Prior Art Unsatisfactory For Its Intended Purpose"), it is submitted that claim 24 and its dependent claims 25-29, 31-34 and 50 are allowable.²

¹ See also *In re Eli Lilly & Co.*, 14 USPQ2d 1741, 1743 (Fed. Cir. 1990) (obviousness does not exist where prior art "does not contain a sufficient teaching of how to obtain the desired result"); *In re Deuel*, 34 USPQ2d 1210, 1216 (Fed. Cir. 1995) ("[A] general incentive does not make obvious a particular result"); *In re Merck & Co., Inc.*, 231 USPQ 375, 379 (Fed. Cir. 1986) (obviousness is only established where prior art provides a "reasonable expectation that the beneficial result will be achieved"); *Ex parte Goldhaber*, 41 USPQ2d 1172, 1177 (Bd. Pat. App. & Int. 1995) ("a reasonable expectation of success.... is required for obviousness").

² Regarding the comment at page 3 that certain alleged prior art is regarded to be admitted by the Applicant because the Applicant did not traverse the Examiner's assertions (citing MPEP 2144.03), please note that the allegations are not admitted; rather, the allowability of the dependent claims was not separately argued because claim 24 is believed allowable, thus rendering the independent allowability of the dependent claims moot.

3. **Rejection of Claims 36-38 under 35 USC §102(b) in view of U.S. Patent 5,192,301 to Kamiya et al.**

The rejection regards *Kamiya et al.* to have the structure labeled below:



CLAIM 36 (AS AMENDED)

36. A releasable connector for releasably interconnecting first and second parts, said connector comprising first and second connector regions separate from but adapted to be secured to the first and second parts, respectively, wherein the first connector region has a shape memory effect and is changeable from a first state to a second state above a predetermined trigger temperature, said first state being one in which the first connector region is adapted to hold the first part and the second state being one in which the first connector region is adapted to release the first part so as to enable the first and second parts to be disconnected.

It was argued in the prior Response that *Kamiya*'s alleged second connector region is not "adapted to be secured" to its alleged second part, since it is already so secured. To further emphasize this, claim 36 has been amended to note that the first and second parts are separate from (but adapted to be secured to) the first and second connector regions. As amended, claim 36 plainly does not read on *Kamiya et al.*, nor does there appear to be any matter in the art of record which plainly suggests any modification to *Kamiya et al.* to meet claim 36.

It is also not seen how claim 38 reads on *Kamiya et al.*. This was raised in the last Response, but it was not addressed in the Final Office Action. If the rejection is maintained, please detail the structure of *Kamiya* that is regarded as corresponding to the arrangement of claim 38. It seems that the Examiner's interpretation of claim 36 versus *Kamiya* is not compatible with an interpretation of claim 38 that also reads on *Kamiya*.

4. Rejection of Claims 40-43 and 46 under 35 USC §103 in view of U.S. Pub. 2002/0138095 to Mazzocchi et al. and U.S. Patent 5,192,301 to Kamiya et al.

Claims 40 (and its dependent claims 41-42) and 43 are submitted to be allowable for at least the same reasons as claim 24 (as discussed in Section 2 of this Response) and claim 36 (as discussed in Section 3 of this Response).

Regarding claim 42, please note the foregoing comments in Section 3 of this Response regarding claim 38.

Regarding claim 46, please note the foregoing comments in Section 2 of this Response regarding claim 24.

5. Rejection of Claim 52 under 35 USC §102 and/or §103 in view of U.S. Pub. 2002/0138095 to Mazzocchi et al.

Independent claim 52 specifically recites that the anchor part (which is formed of substantially coplanar turns of wire) is situated at a *terminal end* of the stent. The Examiner states at page 5 of the Office Action that:

The occluding anchor part 64 is "at a terminal end of the stent" as broadly claimed since the terminal end is considered to be the entire right end portion of the stent as seen in figure 5A which includes the anchor part 64.

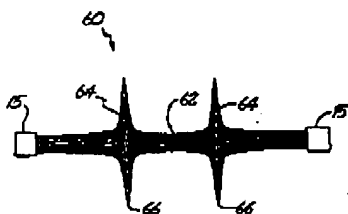


Fig. 5A

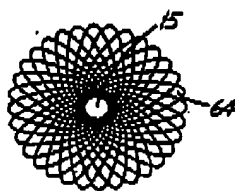


Fig. 5B

CLAIM 52 (emphasis added)

52. A stent for surgical implantation into a patient, said stent including a wire which is expandable from a relatively straightened state for introduction into the patient, to an occluding anchor part at a *terminal end* of the stent in which the wire has adopted a series of turns extending over the cross-sectional area of the occluding anchor part, and wherein the wire turns in said occluding anchor part are of

(a) cycloidal form producible by displacing individual turns of a cylindrical helix laterally in different directions and so that they are substantially coplanar, or

(b) spiro-cycloidal form producible by displacing individual turns of a tapering helix laterally in different directions and so that they are substantially coplanar.

This interpretation is incorrect, and is not reasonable. It is accepted that during examination, the USPTO must interpret the claims using their broadest *reasonable* interpretation (MPEP 2111). Words in a claim are therefore given their plain meaning unless a contrary definition is provided in the specification (MPEP 2111.01). Where a claim term is an everyday word which is not assigned a special or limited meaning by the specification, it is acceptable to look to a dictionary to determine the meaning that should be given to the term. MPEP 2111.01; *Optical Disc Corp. v. Del Mar Avionics*, 54 USPQ2d 1289, 1295 (Fed. Cir. 2000); *Vanguard Products Corp. v. Parker Hannifin Corp.*, 57 USPQ2d 1087, 1089 (Fed. Cir. 2000). Here, "terminal" is defined as:

- Merriam-Webster Online Dictionary
(<http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=terminal>)
 - "1 a : of or relating to an end, extremity, boundary, or terminus"
- Encarta Online Dictionary
(<http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861719199>)
 - "at the very end: forming or found at the extreme point or limit of something, or relating to the very end of something"
- The American Heritage® Dictionary of the English Language: Fourth Edition
(<http://www.bartleby.com/61/63/T0116300.html>)
 - "Of, at, relating to, or forming a limit, boundary, extremity, or end"(NOTE: Substantially the same definition is present at Dictionary.com (<http://dictionary.reference.com/search?q=terminal>))

These dictionary definitions make it clear that a "terminal end" is the "very end"; one can't get further to the end than a "terminal end." Under no conventional interpretation can *Mazzocchi et al.* be said to have a cycloidal occluding anchor part 64 at the "terminal end" of the *Mazzocchi* stent: the part 64 is clearly not at the "boundary," "terminus," "very end," "extreme point," etc. of the *Mazzocchi* stent. Further, there is no suggestion that it should be located at that location (or perhaps more importantly, how it even *could* be located at that location). Claim 52 is therefore submitted to be novel, unobvious, and thus allowable.

6. Allowability of Claims

The indication that claims 30, 39, 47-49 and 51 are allowable is noted and appreciated.

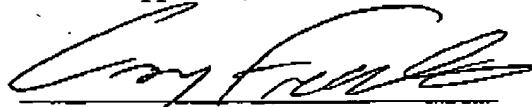
7. New Claims 53-60

New claims 53-60, which ultimately depend from (allowed) claim 39, are submitted to be allowable for at least the same reasons as claim 39.

8. In Closing

If any questions regarding the application arise, please contact the undersigned attorney. Telephone calls related to this application are welcomed and encouraged. The Commissioner is authorized to charge any fees or credit any overpayments relating to this application to deposit account number 18-2055.

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